# Petition

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**81-2133**

No. _____

IN THE

# Supreme Court of the United States

OCTOBER 1981 TERM

UNITED STATES OF AMERICA,

*Respondents,*

*vs.*

GEORGE WEINGARTNER,

*Petitioner.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether a dismissal of a firearms indictment is precluded, as a matter of law where:

(a) the court below assumed the truth of the allegations of the defendant as to the bad faith of, and misconduct of the Government in purposefully maintaining and carrying a previous predicate indictment and

(b) where the premise of the allegations of the defendant focus on the bad faith and misconduct of the Government in handling of the predicate indictment rather than a collateral attack on the constitutionality of the predicate indictment

2. If a firearms indictment may be subject to dismissal upon the bad faith and misconduct of the Government, whether a testimonial hearing on the allegations of the defendant should have been ordered?

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IN THE

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1981

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UNITED STATES OF AMERICA,

*Respondents,*

*vs.*

GEORGE WEINGARTNER,

*Petitioner,*

---

# PETITION AND APPENDIX FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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## PARTIES TO THE PROCEEDING

George Weingartner, petitioner herein United States of America.

## OPINION BELOW

The opinion of the United States Court of Appeals for the Third Circuit has not yet been officially reported. The court's opinion appears in the appendix to the Petition at 1.

The opinion of the District Court United States District Court for the District of New Jersey (Hon. John A. Hannum) has not been officially reported. It appears in the appendix to the Petition at 3a.

## JURISDICTION

The judgment of the court of appeals was entered in March 19, 1982. The jurisdiction of this Court is involved under 28 U.S.C. §1254(1).

## STATUTORY PROVISIONS INVOLVED

18 U.S.C. §922(h) provides in pertinent part:

"(h) It shall be unlawful for any person—

(1) who is under indictment . . . to receive any firearm . . . which has been shipped or transported interstate or foreign commerce."

## STATEMENT OF THE CASE

While this Petition deals with final judgment of conviction and sentence on Count Two of Indictment #79-332, an understanding of the prior history of this case is necessary for a complete analysis of the appellate issues raised.

In August, 1974, a federal grand jury returned indictment No. 74-313 against George Weingartner and four others alleging conspiracy, dealing and possession of electronic devices and obstruction of justice.[1] Following the death of a crucial government witness in January, 1977, investigation of defendant George Weingartner was begun by the United States Customs Service and intensified early in 1978, with an investigator from the Bureau of Alcohol, Tobacco and Firearms, also working in an undercover capacity. The culmination of these

1. Appellant's Appendix in the Court of Appeals (hereinafter cited as "C.A. App.") at 6.

investigations was the execution of search warrants on July 12, 1978. Seized at that time were firearms which allegedly were received by the defendant between December of 1977 and June, 1978 which formed the basis of the instant indictment, No. 79-332.[2]

Based upon materials turned over to the defense in June of 1980, the government had, well prior to the above investigations, conceded its inability to proceed with or prove the prior indictment 74-313. These materials included letter of the Hon. H. Curtis Meanor, U.S.D.J. and certain memoranda from the United States Attorney's Office.[3] Even though these materials suggested that the prior indictment 74-313 was unprovable even during 1977, it was not until October 1st, 1979 that an order dismissing indictment 74-313 was actually filed.[4]

Three days later, a federal grand jury returned the instant indictment, No. 79-332, charging defendant with receipt of firearms while under indictment in December 1977, in April 1978 and on June 16, 1978.[5]

On June 9, 1980, the trial of Indictment 79-332 was to have commenced. However, on that date, counsel was presented with materials revealing a conflict between a United States District Court Judge and the United States Attorney over the latter's intentions and conduct with respect to a previous indictment, 74-313 which formed an essential element of the instant indictment.[6] As a consequence, trial was adjourned and the defendant moved to dismiss the indictment.[7]

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2. C.A. App. at 16.
3. C.A. App. at 134.
4. C.A. App. at 15.
5. C.A. App. at 16.
6. C.A. App. at 140.
7. C.A. App. at 123.

The basis for the motion was premised on governmental misconduct insofar as the government knew in 1977 that it could not prove indictment 74-313, then launched an investigation of defendant, at the same time continuing to hold any disposition of No. 74-313 in abeyance so as to utilize this prior indictment as a "predicate" indictment for any firearms charges brought against the defendant.

The District Court accepted and assumed these allegations of bad faith and conduct for purposes of deciding defendant's motion to dismiss, but held that even assuming bad faith and that an invidious motive sullied the mind of the United States Attorney to prolong the life of the predicate indictment in order to bottom the instant indictment, dismissal of the indictment would not be warranted.[8]

The Court of Appeals (Aldisert, J., Van Dusen, J., and Garth, J.) affirmed, holding, *inter alia*, that the possible invalidity of a predicate indictment is not a defense to a conviction under 18 U.S.C. § 922(h)(1), relying on *Lewis v. United States*, 445 U.S. 55 (1980).[9]

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8. C.A. App. at 201; Petitioner's Appendix at 7a.
9. Pet. App. at 1.

## ARGUMENT

**The holding below that as a matter of law the dismissal of an indictment would not be warranted even assuming facts of governmental misconduct and bad faith is based upon an erroneous reading of *Lewis v. United States.***

As noted above, the petitioner alleged that the government had intentionally and in bad faith maintained a 1974 indictment in a pending status so as to utilize it as a predicate indictment for a prosecution under 18 U.S.C. § 922(h)(1). Yet the court below read *Lewis v. United States*, 445 U.S. 55 (1980) as precluding any inquiry into such misconduct and barring dismissal of any indictment even assuming the monumental proportions of misconduct herein alleged. It is submitted that the doctrine enunciated in *Lewis v. United States, supra*, and its progeny in no way erects such a barrier.

With respect to the exercise of bad faith by the attorney for the sovereign, it should be noted that his duties permit him to "prosecute with earnestness and vigor indeed, . . . (and) . . . while he may strike hard blows, he is not at liberty to strike foul ones." *Berger v. United States*, 295 U.S. 78, 55 S. Ct. 629, 79 L.Ed. 1314 (1955).

In *Lewis supra*, it was held that a constitutional invalidity of the predicate conviction would not be a defense to a charge of a possession of a firearm by a convicted felon in violation of 18 U.S.C. § 1202(A)(1) and that such a firearms prosecution could be based on an arguably unconstitutional conviction. In *United States v. Graves*, 554 F.2d 65 (3rd Cir. 1977) the Third Circuit found that a convicted felon would have to undergo the inconvenience of restrictions on firearms use or possession until he had obtained a judicial invalidation of his prior conviction or had secured executive authoriza-

tion lifting that restriction. In *United States v. McGregor*, 617 F.2d 348 (3rd Cir. 1977), the Third Circuit held that a conviction for possession of a firearm by a convicted felon would not be affected by the subsequent reversal of the predicate conviction when that reversal occurred subsequent to the times of receipt or possession. The holdings of *Lewis*, *Graves*, and *McGregor* all teach that a collateral attack on the constitutionality of a prior conviction may not be utilized as a defense to a firearms indictment, since to permit such an attack, would necessitate a trial within a trial and needless relitigation.

While the *Lewis* principle has been applied to prevent collateral attacks on the constitutionality of predicate indictments, see, *e.g. United States v. Wilder*, 621 F.2d 1077 (10th Cir. 1980), this is not to say that any and all inquiry into an underlying predicate indictment is always barred by the *Lewis* doctrine. See, *e.g.*, *United States v. Arrington*, 618 F.2d 1119 (5th Cir. 1980) (wherein the court held that a Youth Corrections Act discharge automatically expunges conviction and that defendant could not be found guilty of federal firearms violations, finding that defendant's argument was not a collateral attack on the prior conviction, but was an attack based upon the unique import of the Act).

In the case at bar, petitioner did not collaterally attack the predicate obstruction of justice indictment, 74-313, by alleging that that indictment was in any way constitutionally infirmed at the time it was returned. Rather, the focus is on the bad faith and misconduct in the government in maintaining the obstruction indictment 74-313, then unprovable, for the purpose of serving as the basis of new charges that an investigation would hopefully reveal. It is the focus on the governmental misconduct in the handling of the prior indictment rather than on constitutionality of that prior indictment

that serves to distinguish and remove this case from the narrow holdings of *Lewis*, *Graves* and *McGregor*. Thus, the teachings of *Lewis*, *Graves* and *McGregor* in terms of preventing collateral attack on the constitutionality of a prior conviction or indictment in no way should have foreclosed the court below from holding that the misconduct assumed to have existed here would warrant dismissal of the present indictment.

Furthermore, there is nothing in the language of *Lewis* that can be construed as erecting an invulnerable barrier that would even excuse governmental misconduct in its pursuit of a criminal conviction.

In *Lewis*, the Supreme Court noted, in discussing 18 U.S.C. App. §1202(a)(1):

> "one might argue, of course, that the language is so sweeping that it includes in its proscription even a person whose predicate conviction in the interim had been finally reversed on appeal and thus no longer was outstanding. The Government, however, does not go so far, Tr. of Oral. Arg. 29, 30, 37-49, and though we have no need to pursue that extreme argument in this case, we reject it . . ."
>
> 100 S. Ct. at 918, Fn.5.

And in *United States v. McGregor*, *supra*, the Third Circuit stated at 617 F.2d at 349:

> "Indeed, although we are not certain, we believe that the only exception to the rigorous language of *Lewis* would occur in a situation in which the predicate convictions had been reversed on appeal or nullified by executive action, prior to the firearms arrest. See U.S. at __ m. 5, 48 U.S.L.W. at 4207, N5."

The principle that may be distilled from the above statements is that the government would be barred from

bringing or prosecuting a firearms case if the predicate conviction (or indictment) was reversed or dismissed prior to the commission of the illegal firearms transaction. Similarly, if the obstruction indictment, 74-313 had been dismissed when two government attorneys, including the U.S. attorney himself indicated it could not be proven, the government would not have been able to bring or prosecute any firearms indictment since there would have been no indictment pending (a necessary element of 18 U.S.C. §922(h)) when the illegal acts were allegedly committed by the petitioner.

Finally, prosecutorial misconduct as alleged by the petitioner, and assumed by the court below for the purposes of the motion, may not be hidden behind the mask or aegis of discretion or a fear of impairing the prosecutorial function. Certainly the rectification of a series of wrongs committed by the government against a citizen cannot be construed to risk any serious impairment of the function of the United States attorney acting in his sphere, but rather must be viewed as a reaffirmation of the corrective and curative powers of a just and impartial judiciary. In such a vein, prosecutorial discretion has been curbed by the judiciary in those instances where impermissible motives may be attributed to the prosecution such as bad faith, race, religion or a desire to prevent the exercise of the defendant's constitutional rights. *United States v. Berrios*, 501 F.2d 1207, 1211 (2nd Cir. 1974).

The issue of the true parameters of the doctrine enunciated in *Lewis v. United States* should be reviewed by this Court so as to establish that the expansive reading given by the courts below was improper.

## CONCLUSION

The Petition for a Writ of Certiorari to review the decision below should be granted.

Respectfully submitted,

MILLER, HOCHMAN,
MEYERSON & SCHAEFFER,
*Attorneys for Petitioner*

By: /s/ Leonard Meyerson
LEONARD MEYERSON

By: /s/ John R. Schwartz
JOHN R. SCHWARTZ

# Appendix

## APPENDIX

## UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 81-2131

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UNITED STATES OF AMERICA,

*vs.*

WEINGARTNER, GEORGE C.

GEORGE WEINGARTNER,

*Appellant.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
(D.C. CRIM. NO. 79-00332)

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Argued March 19, 1982
Before: ALDISERT, VAN DUSEN, and GARTH,
*Circuit Judges.*

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## JUDGMENT ORDER

After considering the contentions raised by appellant, to-wit, that (1) the district court erred in holding as a matter of law that dismissal of the indictment would not be warranted even assuming facts of governmental misconduct; (2) district court erred in refusing to grant continuance; (3) violation by government of its obligation under *Brady v. Maryland* by its withholding of exculpa-

tory material warrants reversal of conviction and/or new trial; (4) court erred in failing to grant motion for judgment of acquittal on count two as evidence does not establish venue; (5) failure to observe essential fairness by the office of the United States Attorney in the procuring of the present indictment mandates its dismissal; (6) admission of testimony of Robert Weir was erroneous and improper; and (7) judgment of acquittal should have been granted as there was insufficient proof adduced to sustain a conviction on count two; and the court being of the opinion that the possible invalidity of a predicate indictment is not a defense to a conviction under 18 U.S.C. §922(h)(1), *see Lewis v. United States*, 445 U.S. 55 (1980); and that no violation of *Brady v. Maryland*, 373 U.S. 83 (1963), occurs when the witness is known to the defense and is available to him, it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

BY THE COURT,

/s/ Aldisert
ALDISERT

Attest:

/s/ M. Elizabeth Ferguson
M. ELIZABETH FERGUSON
Chief Deputy Clerk

DATED: March 19, 1982

Certified as a true copy and issued in lieu
of a formal mandate on April 12, 1982.

Test:
/s/ M. Elizabeth Ferguson
Chief Deputy Clerk, United States Court of Appeals
for the Third Circuit

**UNITED STATES DISTRICT COURT**
DISTRICT OF NEW JERSEY

CRIMINAL NO. 79-332

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UNITED STATES OF AMERICA

*vs.*

GEORGE C. WEINGARTNER

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Philadelphia, Pa., September 3, 1980

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Before HON. JOHN B. HANNUM J.

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RULING ON DEFENDANT'S MOTION TO DISMISS INDICTMENT

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**BENCH MEMORANDUM**

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PRESENT: MARYANNE TRUMP DESMOND, ESQ.
WARREN S. ROBINS, ESQ.
JEFFREY SPEISER, ESQ.
representing Government

MILLER, HOCHMAN, MEYERSON & SCHAEFFER
by LEONARD MEYERSON, ESQ.
JOHN R. SCHWARTZ, ESQ.
representing defendant

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(33) THE COURT: Pursuant to notice that the Court would rule on Defendant's Motion To Dismiss Indictment we have present Maryanne Trump Desmond, Esq.,

Warren S. Robins, Esq.; and Leonard Meyerson, Esq., for the defendant, and is Mr. Weingartner in court?

MR. MEYERSON: Yes. He is, Your Honor.

THE COURT: Thank you, Mr. Meyerson.

MR. MEYERSON: He is seated in the first row.

THE COURT: Chief Judge Clarkson S. Fisher, United States District Court, District of New Jersey, by letter dated June 18, 1980, forwarded a copy of Defendant's Motion To Dismiss on the ground that the indictment was the result of bad faith on the part of the Government.

Chief Judge Fisher related that "there is a very strong possibility that Judge Meanor will have to testify. This being the case, I request that you consider assigning a judge from another district to hear the motion only. The case itself, if it survives, can early be taken (34) here."

Chief Judge, Third Judicial Circuit, Collins J. Seitz, designated Judge John B. Hannum of the United States District Court, for the Eastern District of Pennsylvania.

United States District Court Judge Coolahan, opinion filed February 27, 1980, earlier addressed Defendant's Motion To Dismiss For *Failure To Inform The Grand Jury Of The Dismissal Of The Underlying Indictment.*

I have before me and will incorporate in this bench memorandum from United States versus Weingartner, 485 F. Supp. 1167 (1979) where it starts on Page 1173 under b and goes on to Page 1178 and stops midway down the page at Paragraph (7).

I would note as respect this transcript an insertion by me on Page 1175, the second column, third sentence where it says "appeal pending," and add "Cert. denied January 14, 1980."

The Court postures the issue presented by defendant's motion as follows: Assuming, arguendo, the validity of defendant's factual contentions, would a dismissal of the indictment be warranted?

Accordingly, the defendant's motion may be decided as a matter of law and the Court concludes and so rules that dismissal is unwarranted.

(35) The criminal indictment herein concerned was partially obtained as a result of a disability incumbent upon the defendant; that is, the fact that the defendant was under indictment for an alleged obstruction-of-justice offense made it unlawful for him to receive any firearm or ammunition which had been shipped or transported in interstate or foreign commerce.

The fact that a predicate indictment exists is a necessary element of a firearms offense cognizable under 18 United States Code, Section 922(h)(1).

The question then arises whether a predicate indictment need be "legitimate" only in how it was originally obtained or if its "legitimacy" may somehow be abrogated by the fact of its unnecessary pendency.

The proper response to this inquiry is guided by the United States Supreme Court's holding in United States versus Lewis, 100 Supreme Court 915 (1980).

In Lewis the court was presented with the opportunity to resolve a conflict among the various circuits.

One line of cases held that when a voidable predicate conviction was overturned, even when reversal was subject to the charging of a firearms offense, the firearms charge was to be overturned as well. See, for example, United States versus Lufman, 457 F.2d 165 (7th Cir. 1972).

A contrary approach, however, applied the (36) rule that once a conviction for a felony is obtained the proscription against carrying a firearm attaches until the predicate conviction is actually overturned or otherwise expunged. See, for example, Barker versus United States, 579 F.2d 1219 (10th Cir. 1978); United States versus Liles, 432 F.2d 18 (9th Cir. 1970).

The Lewis court adopted the latter line of cases and held that:

> ". . . the fact of a felony conviction imposes a firearm disability until the conviction is vacated or the felon is relieved of his disability by some affirmative action, . . ."
>
> United States versus Lewis at 918.

In essence, what was decided was that Congress had rationally concluded that receipt and possession of firearms by convicted felons constituted a threat to the continued and effective operation of the Government of the United States and that, accordingly a felony conviction, even an allegedly invalid one, is a sufficient basis for which to prohibit the receipt and possession of firearms.

Congress successfully created a proscription against firearms possession by persons considered disabled by a felony conviction regardless of whether that disability was subsequently removed for whatever reason.

The ruling in Lewis directly applicable for (37) violations of 18 United States Code (App.) Section 1202(a)(1) is indirectly pertinent by sound inference and analogy for violations of 18 United States Code, Section 922(h)(1).

In the instant case the fact that the 1974 obstruction-of-justice predicate indictment was legitimately obtained and pending at the time of the defendant's arrest, United

States versus Weingartner, 485 F. Supp. 1167, 1169 (District of New Jersey 1980), requires a holding that the subject indictment is proper and valid and that its dismissal is unwarranted.

In short, even if an invidious motive sullied the mind of the United States Attorney to prolong the life of the predicate indictment in order to bottom the subject indictment, it remains fact that the predicate indictment was pending at the time of the defendant's arrest which constitutes the key element of the offense charged.

The application of the Lewis ruling to the instant case presents one philosophically troublesome area.

It would appear that there exists something unsavory about tolerating even an assumption of governmental misconduct of the proportions alleged here.

In this context the factual distinctions between Lewis and the instant case arise.

Although the Court can not envision the distinctions of achieving any significance to its ruling, it is (38) an area worthy of discussion.

In Lewis the predicate conviction forming the basis for the subject indictment and conviction was subsequently reversed on grounds that it was obtained without counsel being provided the defendant in contravention of the holding in Gideon v. Wainwright, 372 U.S. 335 (1963).

In the instant case the contention, assumed arguendo for purposes of resolving the defendant's motion is that the United States Attorney intentionally prolonged the ife of the predicate indictment for the purpose of procuring the subject indictment.

Although the Court is cognizable that it is a matter of speculation, it would appear that the element of inten-

tional misconduct assumed existent here is absent in Lewis.

The cryptic message contained in the dicta of United States v. MacGregor, 617 F.2d 348 (3rd Cir. 1980) thus may emerge to scrutinize a carefully-considered decision.

In MacGregor the Third Circuit noted the following:

> "Indeed, *although we are not certain*, we believe that the only exception to the rigorous language of *Lewis* would occur in a situation in which the predicate convictions had been reversed on appeal or nullified by executive action (39) prior to the firearms arrest."

(Citation omitted.)

United States versus MacGregor, supra, at 349 (emphasis added).

The Court views the facts of the instant case with sufficient certainty as failing to comprise another beyond the two exceptions of Lewis.

The Court's ruling today, generally, and its response to the philosophical area specifically is based on the perceived focus of the Lewis decision.

Place in a contextual framework the Supreme Cort did not emphasize the cause for the reversal of the predicate conviction or the manner in which it was utilized, but, rather, concentrated on the effect of the disability statutorily constructed.

Once the disability obtained, judicial inquiry was not to pertain to the manner in which it was maintained, but, rather, simply whether it was maintained.

In this regard the Supreme Court states that a person "before obtaining his firearm (should challenge) his prior conviction in an appropriate proceeding . . . and that

. . . Congress clearly intended that the defendant clear his status before obtaining a firearm, thereby fulfilling Congress's purpose 'broadly to keep firearms away from the persons Congress classified as potentially irresponsible and (40) dangerous'."

United States versus Lewis, supra, at 920 (emphasis in original).

In the closing paragraph of the opinion the Supreme Court restated that:

> ". . . a convicted felon may challenge the validity of a prior conviction, or otherwise remove his disability, before obtaining a firearm."

United States versus Lewis, supra, at 922.

Per the clear ruling of Lewis, it is manifestly apparent that the defendant in the instant case had as his sole recourse procedures to eliminate the existence of the predicate indictment.

Inasmuch as these procedures were not utilized during the five-year life span of the 1974 obstruction-of-justice indictment, the subject indictment must stand and the Defendant's Motion To Dismiss Indictment must be denied.

See, generally, United States versus Graves, 554 F.2d 65 (3rd Cir. 1977).

In simple terms the Order denying the Defendant's Motion To Dismiss Indictment states to the man on the street that he must remove his disability to possess or receive a firearm. This is a stiff pronouncement.

Weingartner was under indictment—that is, disability. See Graves at Page 71.

(41) An indictment ordinarily has limited legal effect reflecting the deliberations of grand jurors as to the probable cause for believing that the indictee might be guilty.

Unlike a conviction the indicted offense remains unproved at least through a trial; the individual named in the indictment remains innocent until guilt is demonstrated.

Even so, Congress undoubtedly found that persons under indictment have a somewhat greater likelihood than other citizens to misuse firearms and so indictees were included within the prohibitory classification of Section 922.

Weingartner to prevail was required to sometime between the obstruction indictment and before possession and receipt of the firearm to remove the obstruction indictment.

Once he possessed or received the firearm, the offense was complete.

We enter an appropriate order.

Mr. Meyerson.

MR. MEYERSON: Yes, Sir.

May it please the Court, just—I realize Your Honor has ruled, but for a point of clarification to any other judge who may have to deal with this particular (42) matter, I would ask Your Honor if by—I realize it is up to me to interpret Your Honor's decision and I am certainly not asking Your Honor to re-explain your decision, but I think that, one, Your Honor did address and finally ruled by what you just stated in the order that the application to dismiss the indictment was denied.

May I also take it, so that it can be clarified on this record, that Your Honor is also denying a hearing to be conducted relative to the issue of misconduct and bad faith upon the United States Attorney's Office that has been alleged by the defendant, just for the purpose of

clarification to anyone else who at any time may pose that particular issue.

THE COURT: That is clear, Mr. Myerson.

MR. MYSERSON: Fine.

THE COURT: Stand in recess.

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(Adjourned at 2:20 P.M.)

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IN THE
**UNITED STATES DISTRICT COURT**
for the Eastern District
of Pennsylvania

CRIMINAL NO. 79-332 (D.N.J.)

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UNITED STATES OF AMERICA

v.

GEORGE C. WEINGARTNER

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**ORDER**

AND NOW, this 3rd day of September, 1980, it is ORDERED that the defendant's Motion To Dismiss Indictment is DENIED.

/s/ J. B. Hannum
J.

## 18 U.S.C. §922

### § 922. Unlawful Acts

(a) It shall be unlawful—

(1) for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm or ammunition to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to licensed importer, licensed manufacturer, or licensed dealer for the sole purpose of repair or customizing;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provi-

sions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (a) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a rifle or shotgun obtained in conformity with the provisions of subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter.

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun

(as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe resides in any State other than that in which the transferor resides (or other than that in which its place of business is located if the transferor is a corporation or other business entity); except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes; and

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.

(2) any firearm or ammunition to any person in any State where the purchase or possession by such person of such firearm or ammunition would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of a rifle or shotgun to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of sale in both such contiguous States, and the purchaser and the licensee have, prior to the sale, or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) applicable to intrastate transactions other

than at the licensee's business premises, (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes, and (C) shall not preclude any person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a State other than his State of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other State, from purchasing a rifle or shotgun in such other State from a licensed dealer if such person presents to such dealer a sworn statement (i) that his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other State, and (ii) indentifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity; and

(5) any firearm or ammunition to any person unless the licensee note in his records, required to be kept pursuant to section 923 of this chapter, the name, age and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1),(2),(3), and (4) of this subsection shall not apply to transaction between licensed importers, licensed manufacturers, licensed dealers, or licensed collectors. Paragraph (4) of this subsection shall not apply to a sale

or delivery to any reasearch organization designated by the Secretary.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name and address of the principal law enforcement officer of the locality to which the firearm will be delivered are .....

.....

Signature_____Date _____"

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a

form prescribed by the Secretary, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) has been adjudicated as a mental defective or has been committed to any mental institution.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported above any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common carrier for the duration of the trip without violating any of the provisions of this chapter.

(f) It shall be unlawful for any common carrier or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(g) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954);

or

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any firearm or ammunition in interstate or foreign commerce.

(h) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who has been adjudicated as a mental defective or who has been committed to any mental institution;

to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate commerce, any stolen fire-

arm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, conceal, store, barter, sell or dispose of any stolen firearm or stolen ammunition, which is moving as, which is a part of, or which constitutes interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person to knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered.

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder. Added Pub.L. 90-351, Title IV, § 902. June 19, 1968, 82 Stat. 228, and amended Pub.L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1216.